

DB

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION )	
FOR EXTENSION OF TIME ON BENEFICIAL )	FINAL ORDER
WATER USE PERMIT NO. 59179-s41D )	
GRANTED TO GOLDEN STAR MINING, INC. )	

\* \* \* \* \*

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received.

Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the July 27, 1989 Proposal for Decision, and incorporates them herein by reference.

WHEREFORE, based on the record herein, the Department makes the following:

ORDER

Application for Extension of Time to Perfect Beneficial Water Use Permit No. 59179-s41D by Golden Star Mining, Inc. is hereby granted. Permittee shall put the water to a beneficial use in the amounts specified in the Permit by no later than November 30, 1991. The Notice of Completion of Water Development, Form 617, shall be filed by November 30, 1991.

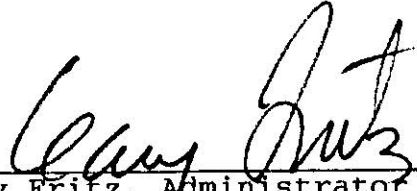
NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a peti-

**CASE #** 59179

tion in the appropriate court within 30 days after service of the Final Order.

Dated this 15 day of September, 1989.


  
\_\_\_\_\_  
Gary Fritz, Administrator  
Department of Natural  
Resources and Conservation  
Water Resources Division  
1520 East 6th Avenue  
Helena, Montana 59620-2301  
(406) 444-6605

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record at their address or addresses this 15<sup>th</sup> day of September, 1989, as follows:

Jack DeBoer  
Golden Star Mining, Inc.  
1220 Porter Avenue  
Ogden, Utah 84404

T.J. Reynolds  
Helena Field Manager  
1520 East 6th Avenue  
Helena, MT 59620

  
\_\_\_\_\_  
Irene V. LaBare  
Legal Secretary



BB

BEFORE THE DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

\* \* \* \* \*

IN THE MATTER OF THE APPLICATION        )  
FOR EXTENSION OF TIME ON BENEFICIAL    )    PROPOSAL FOR DECISION  
WATER USE PERMIT NO. 59179-s41D        )  
GRANTED TO GOLDEN STAR MINING, INC.    )

\* \* \* \* \*

Pursuant to the Montana Water Use Act and the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above entitled matter on May 19, 1989 in Helena, Montana. Applicant for extension, Golden Star Mining, Inc. (hereafter referred to as "Applicant"), was represented by owner Jack DeBoer.

Jim Beck, of the Helena Field Office of the Department of Natural Resources and Conservation (hereafter, "Department"), Water Rights Bureau, was also present at the hearing.

EXHIBITS

Applicant offered two exhibits for inclusion in the record.

Applicant's Exhibit 1 is a copy of correspondence to the Applicant from Sandhurst Mining Company concerning a testing program on Applicant's properties.

Applicant's Exhibit 2 is a copy of a document entitled "Operations Review", which is a report of results from exploration tests conducted on Applicant's property.

Both exhibits were admitted into the record without objection.

CASE # 59179

Having reviewed the record of this matter and being fully advised in the premises, the Examiner proposes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Section 85-2-312(3), MCA, states in relevant part:

The department may, upon a showing of good cause, extend time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. All requests for extensions of time must be by affidavit and must be filed with the department prior to the expiration of the time limit specified in the permit or any previously authorized extension of time. The department may issue an order temporarily extending the time limit specified in the permit for 120 days or until the department has completed its action under this section, whichever is greater. Upon receipt of a proper request for extension of time, the department shall prepare a notice containing the facts pertinent to the request for extension of time and shall publish the notice in a newspaper of general circulation in the area of the source. The department may serve notice by first-class mail upon any public agency or other person the department determines may be interested in or affected by the request for extension of time. The department shall hold a hearing on the request for extension of time on its own motion or if requested by an interested party. . . .

2. On October 31, 1986, Provisional Permit to Appropriate Water No. 59179-s41D was granted to Golden Star Mining, Inc. with a priority date of February 19, 1985. Applicant was required under the terms of the permit to complete the appropriation works, and have applied water to a beneficial use as specified in the permit on or before November 30, 1988.

3. On November 7, 1988, the Department received an Application for Extension of Time in which to put the water to use. The application asks for an additional two to three years in which to get the project operational.

4. The pertinent portions of the Application for Extension of Time were published in the Tribune Examiner, a newspaper of general circulation in the area of the source, on December 20, 1988. The notice stated the application was requesting an additional three years in which to perfect the project. No objections were received regarding the request.

5. The Department notified the Applicant on a Notice of Action on Application for Extension of Time, Form 616, dated March 7, 1989, that it was proposing to deny the request. The denial was based on a lack of showing of due diligence toward completion of the project and that no plans were submitted indicating that the project would be completed within the requested period of time.

6. Applicant testified that he has entered into an agreement with Sandhurst Mining Company to purchase Applicant's property, which is the location of the proposed project. Sandhurst Mining Company has done extensive testing on the property to determine the feasibility of the mining project as indicated by Exhibits 1 and 2.

7. During the spring of 1987, the Applicant's mining claims were unexpectedly "jumped" by an out-of-state entity. Applicant has been and is currently before a District Court to get the

matter settled. A decision is expected within the next month or two.

8. Applicant testified that water has been used in a limited amount for the testing that was conducted by Sandhurst Mining Company and two settlement ponds have been constructed in anticipation of the mining project getting under way.

9. The permitted use in this matter was authorized under the condition that it be used in conjunction with two other permits, Nos. 59138-41D and 59178-41D. These permits have completion deadlines of November 30, 1990 and November 30, 1989, respectively. All of these permits involve the same mining project but are for separate sources of water.

#### CONCLUSIONS OF LAW

1. The Department has jurisdiction over the subject matter herein, and over the parties hereto.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule appearing fulfilled, the matter is properly before the Examiner.

3. The Applicant for the Extension of Time must show it has exercised reasonable diligence towards the completion of the appropriation works and putting water to a beneficial use. See In the Matter of the Application for Extension of Time to Perfect Beneficial Water Use Permit No. 39787-s76M Transferred to Marvin and Mary Ann Rehbein, Proposal for Decision, June 16, 1988, pp. 5-9 (Final Order, January 24, 1989).

4. Although concern does exist as to possible speculation on the part of the Applicant, an Extension of Time in which to complete this permitted project appears justified under the circumstances presented to the Examiner.

The testimony and evidence presented by the Applicant tend to show that some effort has been expended by Sandhurst Mining Company in regards to getting this project started and water put to use under the permit. Work done toward completion of the permitted project by a party other than Applicant may be viewed as due diligence on the part of Applicant if done with his permission. Further, the evidence and testimony presented at the hearing, over and above that presented with the original extension application, indicates that Applicant has been diligent in pursuit of completion of the project although that diligence has been mainly exercised to obtain resolution of the issue of "claim jumpers". The claim jumping, an unexpected and unanticipated obstacle to the sale of the property and commencement of the project, must be resolved before the mining and use of water can begin.

5. Applicant requested a maximum extension of three years for completion of the project. This is a reasonable amount of time under the circumstances.

WHEREFORE, the Examiner proposes the following:

PROPOSED ORDER

Application for Extension of Time to Perfect Beneficial Water Use Permit No. 59179-s41D by Golden Star Mining, Inc. is

hereby granted. Permittee shall put the water to a beneficial use in the amounts specified in the Permit by no later than November 30, 1991. The Notice of Completion of Water Development, Form 617, shall be filed by November 30, 1991.

#### NOTICE

This proposal is a recommendation, not a final decision. All parties are urged to review carefully the terms of the proposed order, including the legal land descriptions. Any party adversely affected by the Proposal for Decision may file exceptions thereto with the Hearing Examiner (1520 E. 6th Ave., Helena, MT. 59620-2301); the exceptions must be filed within 20 days after the proposal is served upon the party. Section 2-4-623 MCA.

Exceptions must specifically set forth the precise portions of the proposed decision to which exception is taken, the reason for the exception, and authorities upon which the exception relies. No final decision shall be made until after the expiration of the time period for filing exceptions, and the due consideration of any exceptions which have been timely filed.


Any adversely affected party has the right to present briefs and oral arguments pertaining to its exceptions before the Water Resources Division Administrator. A request for oral argument must be made in writing and be filed with the Hearing Examiner within 20 days after service of the proposal upon the party. Section 2-4-621(1), MCA. Written requests for an oral argument

must specifically set forth the party's exceptions to the proposed decision.

Oral arguments held pursuant to such a request normally will be scheduled for the locale where the contested case hearing in this matter was held. However, the party asking for oral argument may request a different location at the time the exception is filed.

Parties who attend oral argument are not entitled to introduce evidence, give additional testimony, offer additional exhibits, or introduce new witnesses. Rather, the parties will be limited to discussion of the evidence which already is present in the record. Oral argument will be restricted to those issues which the parties have set forth in their written request for oral argument.

Dated this 27<sup>th</sup> day of July, 1989

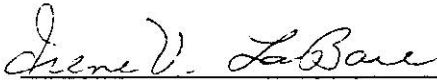
  
Scott Compton, Hearing Examiner  
Department of Natural Resources  
and Conservation  
1201 East Main  
Bozeman, Montana 59715

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record, at their address or addresses this 27<sup>th</sup> day of July, 1989, as follows:

Jack DeBoer  
Golden Star Mining, Inc.  
1220 Porter Avenue  
Ogden, Utah 84404

T.J. Reynolds  
Helena Field Manager  
1520 East 6th Avenue  
Helena, MT 59620

  
\_\_\_\_\_  
Irene V. LaBare  
Legal Secretary